

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TREVOR BRIGHT,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-06-1633
	§	
GB BIOSCIENCE, INC.,	§	
<i>Defendant.</i>	§	

ORDER

Defendant GB Bioscience, Inc. filed a motion to dismiss pursuant to Federal Rule 12(b)(1) as part of its answer to the complaint. The motion asserts that plaintiff Trevor Bright did not file his lawsuit within 90 days of receiving a right to sue notice from the Equal Employment Opportunity Commission (“EEOC”).

Title VII provides that claimants have 90 days to file a civil action after receipt of a right to sue notice from the EEOC. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002). The 90-day filing period is not a jurisdictional prerequisite but is similar to a statute of limitations and is subject to waiver, estoppel, and equitable tolling. *Espinoza v. Missouri Pacific R. Co.*, 754 F.2d 1247, 1248 n.1 (5th Cir. 1985).

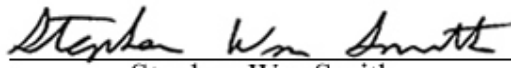
Plaintiff’s response states that plaintiff received the notice of right to sue from the EEOC on February 28, 2006, within 90 days of filing this suit on May 12, 2006. However, the notice of right to sue indicates it was mailed to plaintiff on January 16, 2006. Plaintiff’s counsel has filed an affidavit stating the notice to sue was received in his office on February 28, 2006, as reflected by a receipt stamp on a separate letter to Bright from the EEOC

forwarding copies of his charge file and informing him that the charge file will be destroyed within three years. There is no evidence attached to the response indicating the date plaintiff himself received the notice of right to sue. The court is unable based on the current record to determine whether the 90-day filing period has been met in this case. It is therefore,

ORDERED that plaintiff shall have until December 1, 2006 to file a supplemental response clarifying his position and presenting affidavit evidence to support his allegation that this suit was filed within 90 days of his receipt of the notice of right to sue. It is further

ORDERED that the court will have a hearing on this matter on December 7, 2006 at 10:00 a.m. in courtroom 702 of the United States Courthouse, 515 Rusk, Houston, Texas 77002.

Signed at Houston, Texas on November 17, 2006.



Stephen Wm Smith
United States Magistrate Judge